



PUBLIC NOTICE

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Actions Taken Under Cable Landing License Act

Section 1.767(a) Cable Landing Licenses, Modifications, and Assignments or Transfers of Control of Interests in Cable Landing Licenses (47 CFR § 1.767(a))

By the Chief, Telecommunications and Analysis Division, Office of International Affairs:

Pursuant to an Act relating to the landing and operation of submarine cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act), Executive Order No. 10530, Exec. Ord. No. 10530 reprinted as amended in 3 U.S.C. § 301, and section 1.767 of the Commission's rules, 47 CFR § 1.767, the following applications ARE GRANTED. These grants of authority are taken under section 0.261 of the Commission's rules. 47 CFR § 0.261. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules may be filed within thirty (30) days of the date of this public notice. 47 CFR §§ 1.106, 1.115.

These applications have been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules and consistent with procedures established with the Department of State. 47 CFR § 1.767(b); see Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Commission Announces Department of State's Revised Procedures for its Consideration of Submarine Cable Landing License Applications, IB Docket No. 16-155, Public Notice, DA 22-435 (rel. Apr. 19, 2022).

This public notice serves as each cable landing licensee's Cable Landing License, or modification thereto, pursuant to the Cable Landing License Act and sections 1.767 and 1.768 of the Commission's rules. 47 CFR §§ 1.767, 1.768. Cable landing licensees should review the terms and conditions of their licenses. Failure to comply with these terms and conditions or relevant Commission rules and policies could result in fines or forfeitures.

Acceptability for Filing Public Notice: On April 22, 2022, The Bahamas Telecommunications Company Limited (BTC or Applicant) filed an application for a new cable landing license to allow the continued operation of the Bahamas II Cable System (Bahamas II Cable) (SCL-LIC-19960329-00128, SCL-MOD-19980303-00004) for an additional 25 years following the expiration of the current license on April 1, 2022. BTC filed an amended and restated application on August 23, 2022 and a supplemental letter on October 24, 2022. See Non-Streamlined Submarine Cable Landing License Applications Accepted for Filing, File No. SCL-LIC-20220422-00016, Public Notice, Report No. SCL-00395NS (IB Nov. 18, 2022). No comments or oppositions were filed in response to the Public Notice. The Bahamas II Cable has been operating pursuant to special temporary authority following expiration of the license while the Commission considered the application for a new cable landing license. See SCL-STA-20220303-00010, SCL-STA-20221005-00027, and SCL-STA-20230404-00007. BTC filed a supplement on August 16, 2023.

The Bahamas II Cable connects Vero Beach, Florida to Nassau, the Bahamas, with an intermediate point at Eight Mile Rock, the Bahamas. In 1996, the Commission granted a cable landing license for the Bahamas II Cable to a four-member consortium. See AT&T Corp. (AT&T), MCI International, Inc., The St. Thomas and San Juan Telephone Company, Inc., Telefonica Larga Distancia de Puerto Rico, Inc. See File No. S-C-L-96-003, Joint Application for a License to Land and Operate a Digital Submarine Cable System Between the United States Mainland and the Bahamas, the BAHAMAS II Cable System, Cable Landing License, 11 FCC Rcd 9188 (IB 1996). In 1998, the Commission modified the Bahamas II license to add an additional licensee. See Ursus Telecom Corp., File No. SCL-96-003(M), Application to Amend the Submarine Cable Landing License for the Bahamas II Cable System to Add Ursus Telecom Corp. as a Licensee, Modification of Cable Landing License, 13 FCC Rcd 15672 (IB 1998). The Bahamas II Cable went into service on April 1, 1997. See Letter from James J.R. Talbot, Assistant Vice President-Senior Legal Counsel, AT&T Services, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, filed in SCL-MOD-19980303-00004 (Mar. 14, 2018) (available on the FCC website through the International Communications Filing System (ICFS) by searching for SCL-MOD-19980303-00004 and accessing "Other filings related to this application" from the Document Viewing area).

BTC is the sole applicant and will be the sole operator of the Bahamas II Cable under the new license. BTC states that three of the original licensees, i.e., AT&T, The St. Thomas and San Juan Telephone Company, Inc., and Telefonica Larga Distancia de Puerto Rico, relinquished their interests in the Bahamas II Cable upon expiration of the original license. According to BTC, the fourth original licensee, MCI International, LLC, terminated its participation in the Bahamas II Cable as of September 30, 2022. BTC states that Ursus Telecom Corp., which became a licensee in 1998, has been defunct for over 10 years and no longer exists.

The Application has been coordinated with the Department of State as required by Executive Order 10530, pursuant to section 1.767(b) of the Commission's rules, and consistent with the established Department of State procedures. Executive Order 10530, Section 5(a) reprinted as amended in 3 U.S.C. § 301; 47 CFR § 1.767(b); Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001); Commission Announces Department of State's Revised Procedures for its Consideration of Submarine Cable Landing License Applications, IB Docket No. 16-155, Public Notice, DA 22-435 (rel. Apr. 19, 2022). The Department of Justice (DOJ), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), filed a letter to defer action on November 22, 2022. The National Telecommunications and Information Administration (NTIA), on behalf of the Committee, filed a Petition to Adopt Conditions to Authorization and License on August 1, 2023 (Petition). The Committee has no objection to the Commission granting the Application, provided that the Commission conditions its approval on the assurances of BTC to abide by the commitments and undertakings set forth in the July 12, 2023 Letter of Assurances (LOA) from BTC to the Department of Homeland Security, DOJ, and the Department of Defense.

Actions Taken: (1) Grant of Cable Landing License to The Bahamas Telecommunications Company Limited for the purpose of landing and operating a non-common carrier fiber optic submarine cable, the Bahamas II Cable System, that connects Vero Beach, Florida and Nassau, the Bahamas; (2) waiver of section 1.767(h)(1) of the Commission's rules, 47 CFR § 1.767(h)(1), in connection with the license; and (3) grant of the Petition filed by NTIA on August 1, 2023.

Licensee Information: BTC is a Bahamas limited company that is 49% owned (voting and equity) by the Treasurer of the Commonwealth of the Bahamas, a Bahamas government entity, and 49% owned (voting and equity) by CWC Bahamas Holding Limited, a Bahamas holding company. The BTC Foundation holds the remaining 2% interest in BTC.

CWC Bahamas Holding Limited is 100% owned (voting and equity) by Cable & Wireless (West Indies) Limited, an English holding company, which is 100% owned (voting and equity) by CWI Group Limited, an English holding company. CWI Group Limited is 100% owned (voting and equity) by Sable Holding Limited, an English holding company, which is 100% owned (voting and equity) by C&W Senior Secured Parent Limited, a Cayman Islands holding company, which is 100% owned (voting and equity) by C&W Senior Finance Limited, a Cayman Islands holding company. C&W Senior Finance Limited is 100% owned (voting and equity) by Cable & Wireless Limited, an English holding company, which is 100% owned (voting and equity) by Cable & Wireless Communications Limited, an English international telecommunications services company, which is 100% owned (voting and equity) by LGE Coral Holdco Limited, an English holding company, which is 100% owned (voting and equity) by Liberty CWC Holdings Limited, a Barbados holding company. Liberty CWC Holdings Limited is 100% owned (voting and equity) by LILAC Services Ltd., a Bermuda holding company, which is 100% owned (voting and equity) by Liberty Latin America Ltd., a Bermuda international provider of cable and telecommunications services. The only person or entity owning more than 10% of the voting interest in Liberty Latin America Ltd. is John C. Malone, a United States citizen who owns a 26.1% voting interest. The Applicant states that there are no other individuals or entities that own 10% or greater voting or equity interests in BTC as a result of their voting interest in Liberty Latin America Ltd. The Applicant states that, to its knowledge, no other persons or entities own or control a 10% or greater interest in BTC.

Cable Design and Capacity: The Bahamas II Cable connects Vero Beach, Florida to Nassau, the Bahamas, with an intermediate point at Eight Mile Rock, the Bahamas. The cable system consists of five optical fiber pairs, with the capacity of each pair comprised of sixteen 100 gigabits per second (Gbps) Basic System Modules. BTC states that the Bahamas II Cable connects with the domestic networks in the continental United States and the Bahamas and provides capacity for broadband traffic between the United States and the Bahamas.

Landing Points and Ownership: The Bahamas II Cable consists of four segments (A, B, C, and D) and three landing sites (Vero Beach, Florida; Eight Mile Rock, the Bahamas; and Nassau, the Bahamas). Segment A is located in U.S. territory and consists of a cable station at Vero Beach, Florida. Segment B consists of a structure to house amplification equipment at Eight Mile Rock, the Bahamas. Segment C consists of the cable station at Nassau, the Bahamas. Segment D comprises the whole of the submarine cable linking Segments A, B, and C, and consists of Subsegments D1, D2, and D3. Segment D1 consists of five fiber pairs linking the cable station at Vero Beach with the passive branch joint, a submerged device composed of a housing and any associated equipment to serve as a junction point for the undersea cable. Segment D2 consists of five fiber pairs linking the passive branch joint to the structure at Eight Mile Rock, and five fiber pairs linking back to the passive branch joint. Segment D3 consists of five fiber pairs linking the passive branch joint to the cable station at Nassau. BTC owns 100% of the ownership interests in all Bahamas II Cable segments except for Segment A, the cable station at Vero Beach, Florida, which is owned by AT&T Corp. The Applicant states that CWC Bahamas Holding Limited operates BTC's day-to-day management and ultimately effectively controls BTC.

BTC requests a waiver of section 1.767(h)(1) of the Commission's rules so that AT&T is not required to be an applicant for the Bahamas II Cable landing license. Section 1.767(h)(1) requires that "[a]ny entity that owns or controls a cable landing station in the United States" shall be "applicants for, and licensees on, a cable landing license." 47 CFR § 1.767(h)(1). According to BTC, AT&T owns the cable landing station in Vero Beach, Florida, while BTC is the landing party in Vero Beach pursuant to an agreement. BTC says that it intends to contract with AT&T for the right to use collocation space in the cable landing station. BTC has entered into a contract with AT&T for certain operation and maintenance services at the cable landing station, according to which AT&T will not have access to BTC's equipment, except: (i) to perform certain operation and maintenance services as per BTC's direction and instructions; or (ii) in cases of emergency. BTC states that the agreement with AT&T has an initial term of 5 years that can be extended by BTC to 25 years. BTC asserts that under this arrangement, BTC will retain operational authority over the Vero Beach landing station and provide direction to AT&T in all matters relating to the Bahamas II Cable.

The purpose of the 1.767(h)(1) requirement is to ensure that entities having a significant ability to affect the operation of the cable system become licensees so that they are subject to the conditions and responsibilities associated with the license. See Submarine Cable Landing License Report and Order, 16 FCC Rcd at 22194-95, paras. 53-54. Although AT&T is the owner of the Vero Beach, FL cable landing station, we find that, based on the agreements between the Applicant and the cable station owner described above, AT&T will not have the ability to affect significantly the operation of the cable system. Accordingly, we grant Applicant a waiver of section 1.767(h)(1) and do not require AT&T to be an applicant/licensee for the Bahamas II Cable.

Regulatory Status of the Cable: The Bahamas II Cable is currently operated on a common carrier basis. BTC proposes to operate the cable on a non-common carrier basis under the new license. BTC contends that the operation of competitive cable systems demonstrates that there are other routing options and competitive alternatives to the Bahamas II Cable system for traffic between the United States and the Bahamas, and that the Bahamas II Cable is not a bottleneck facility requiring common carrier regulation. BTC notes that the ARCOS-1 and Bahamas Internet Cable System cables both currently provide service between the United States and the Bahamas on a non-common carrier basis. BTC argues that in order to respond to the competition from other non-common carrier cables, it must change the Bahamas II Cable from common carrier to non-common carrier status and make individualized decisions with regard to the rates, terms, and conditions pursuant to which it will offer capacity. BTC plans to offer Bahamas II Cable capacity to enterprise customers pursuant to contracts that are negotiated on an individual case basis. BTC may also sell excess capacity on a wholesale basis to other carriers pursuant to individually negotiated rates, terms, and conditions tailored to their particular needs. BTC states that customers have no expectation that the Bahamas II Cable will be operated on a common carrier basis due to the competition from competing (and non-common carrier) cable systems operating between the United States and the Bahamas.

Applicant has provided information and demonstrated that the proposed operation of the cable on a non-common carrier basis satisfies the requirements set forth in *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir 1976) (NARUC I), cert. denied, 425 U.S. 992 (1976). See also Submarine Cable Landing License Report and Order, 16 FCC Rcd at 22202-22203, paras. 69-70; Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Notice of Proposed Rulemaking, 15 FCC Rcd 20789, 20815-20818, paras. 62-67.

Conditions and Requirements: BTC shall comply with the routine conditions specified in section 1.767(g) of the Commission's rules, 47 CFR § 1.767(g), and with the requirements of section 1.768 of the Commission's rules, 47 CFR § 1.768 (Notification by and prior approval for submarine cable landing licenses that are or propose to become affiliated with a foreign carrier).

BTC has market power in the Bahamas and must comply with the reporting requirements in section 1.767(l) of the Commission's rules on the U.S.-Bahamas route. 47 CFR § 1.767(l).

We grant the Petition filed in this proceeding by NTIA, on behalf of the Committee, on August 1, 2023. Accordingly, we condition grant of this Application on The Bahamas Telecommunications Company Limited abiding by the commitments and undertakings contained in its LOA with the Department of Homeland Security, the Department of Justice, and the Department of Defense, dated July 12, 2023. The Petition and the LOA are publicly available and may be viewed on the FCC website through the International Communications Filing System (ICFS) by searching SCL-LIC-20220422-00016 and accessing "Other filings related to this application" from the Document Viewing area.

A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the cable landing license and thus grounds for declaring the license terminated without further action on the part of the Commission. Failure to meet a condition of the license may also result in monetary sanctions or other enforcement action by the Commission.

License Term: Under the Commission's rules, a cable landing license shall expire 25 years after the in-service date for the cable. 47 CFR § 1.767(g)(15). As the Bahamas II Cable is already in service, this license shall expire 25 years from grant, August 17, 2048.
